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ABSTRACT

The attitudes of Supreme Court justices toward freedom of the press and ways in which their voting patterns affect the press were investigated in a study involving an examination of 235 nonunanimous decisions (G-cases), 199 nonunanimous civil liberties cases (C-cases), and 23 nonunanimous freedom of the press cases (P-cases) decided by the Burger court between the start of the 1969 term and midway through the 1973 term. Units of measurement included the ten justices, the ideological outcomes of the C-cases and G-cases, the press-favorable outcomes of the P-cases, and the votes of the justices. Each justice was compared with every other justice on the number of times they agreed with each other; they were then ranked on the basis of the degree of their correlation with the factor accounting for the most variance. Results showed that in each of the samples, the justices tended to vote in blocs. The blocs in G- and C-cases seemed to represent liberalism, conservatism, independence, and neutralism. The P-case blocs seemed to represent favorable views, unfavorable views, absolutism, and independence. Since the findings indicate that justices do vote in blocs in First Amendment cases, mass communication law researchers can now have more confidence in describing the attributes of the blocs and in explaining First Amendment freedoms. (FL)

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THE BURGER COURT IN FACTORIAL SPACE

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THE BURGER COURT IN FACTORIAL SPACE

Introduction

The work of such pioneers in the field of judicial behavioralism as C. Herman Pritchett, S. Sidney Ulmer, and Glendon Schubert has demonstrated the need for analysis of attitudes of United States Supreme Court justices as well as analysis of the justices' decisions and opinions.[1]

Judicial behavioralists have studied judicial attitudes toward a number of major issues.[2] But the area of judicial attitudes toward freedom of expression has remained relatively unexplored.[3]

Deciding First Amendment cases--like other kinds of cases--involves more of justices than looking to the Constitution and precedents. The system of the press is part of a political system as well as a legal system. Differences among systems of the press, according to Professor Fred S. Siebert, are part differences among "philosophical and political rationales and theories."[4] Conceptions of press systems change over time and in different societies, the Commission on Freedom of the Press determined in 1947.[5]

Mr. Dooley decided early that judges were involved in politics.[6] Other studies have documented his assertion.[7] And Professor Charles G. Haines linked law, politics, and personalities in 1922:

> The process of judicial decision is determined to a considerable extent by the judges' views of fair play, public policy, and their general consensus as to what is right and just. Law and politics are indeed inseparable and politics is the very stuff of life. Its relations are intensely human, and generally intimately personal.[8]

Basic attitudes of Supreme Court justices play a significant part in the development of press law. Discovery of these underlying attitudes in First Amendment litigation should be beneficial to the study of press law.

Hypotheses

By applying various social scientific techniques judicial behavioralists have found voting tendencies in Supreme Court justices.[9] By controlling the sample of cases under study behavioralists were enabled to confirm similar, albeit a priori, assumptions by other Supreme Court observers that basic predilictions of justices often steer the justices toward conclusions about particular kinds of social, political, and economic issues.[10]

By controlling for freedom of the press cases, this study attempts to discover attitudes of Supreme Court justices toward freedom of the press.

Are there basic predilictions of Supreme Court justices concerning freedom of the press? Can attitudes be inferred? Is there a relationship between the ideological tendencies of United States Supreme Court justices and their voting behavior in cases affecting the press?

This study will also attempt to illustrate some ways voting patterns of Supreme Court justices in cases affecting the

press can be analyzed and to begin a discussion about the depths of the ideologies the attitudes might represent.

This study begins with a confirmed hypothesis of Schubert: That differences in attitudes of justices toward basic issues raised by the cases before the court account for differences in voting behavior of justices.[11]

Attitudes of justices in other studies have been placed by behavioralists along a unidimensional scale representing "the long standing dispute between liberal and conservative philosophies."[12] This study will be dealing with multi-dimensional space, but the degrees of attitudes will be polarized in terms of press favorableness and press unfavorableness.

Methodology

The units of analysis are Supreme Court cases, which may be regarded as questions with dichotomous answers. The facts determine the issue the court addresses. The justices perceive issues through their interpretations of the facts. Votes on issues are counterparts of values held by the justices. Each case can be considered in the same manner as the value range a justice holds. Measurement of the relationship between the value of the votes cast in regard to a particular issue and the value of the favorableness (or liberalism) of the case outcome to the same issue should reveal the value a justice places on that issue.[13]

The sample of cases includes all 235 nonunanimous decisions (G-cases), 199 nonunanimous civil liberties cases (C-cases), and 23 nonunanimous freedom of the press cases (P-cases) decided

by the Burger Court between the start of the 1969 term and midway through the 1973 term (February, 1974), when data collection was halted.[14]

Units of measurement included (1) Ten justices, including, in order of seniority, Hugo L. Black, William O. Douglas, John M. Harlan, William J. Brennan, Jr., Potter Stewart, Byron R. White, Thurgood Marshall, Harry A. Blackmun, Lewis Powell, and William H. Rehnquist and Chief Justice Warren E. Burger; (2) The ideological outcomes of the C-cases (199 conservative, 80 liberal) and G-cases (139 conservative, 96 liberal);[15] (3) The press favorableness outcomes of the P-cases (17 unfavorable, 6 favorable); and (4) The votes of the justices.

The independent variable was the Supreme Court case. The dependent variable was the vote of the justices.

The cases for the samples were dichotomized into pairs of justices' interagreement, i.e. each justice was compared with every other justice on the number of times they agreed with each other. Fourfold interagreement tables of pairs of justices were constructed. G indexes of agreement were computed from the fourfold tables.[16]

Both fourfold tables and G coefficients of all pairs of justices were arranged in matrixes. Factor analysis was used to analyze the interagreement coefficients. Principle component factoring without iteration and quartimax rotation were used.[17]

Justices were then ranked on the basis of their loadings on the first factor, i.e. on the degree of correlation of their

correlation with the factor accounting for the most variance.

Results

G Burger Court

The eleven justices addressed 235 nonunanimous cases during this period. Fortas resigned in 1969 and Blackmun replaced him in 1970. Black and Harlan retired in 1971 and they were replaced with Powell and Rehnquist in 1972.

The G Burger Court decided a high of 66 cases in 1972 and, except for the 13 cases in the partial 1973 term, a low of 37 cases in 1969. About 29 percent of the cases were decided by one vote or tie votes. The sample included 199 civil liberties cases and 36 economic cases. It was a conservative era. Of the 235 cases, 139 were decided conservatively and 96 liberally.

Pairs of justices with high and positive G indexes were Douglas and Brennan (.606), Douglas and Marshall (.608), Harlan and Stewart (.515), Harlan and Burger (.451), Brennan and Marshall (.759), White and Blackmun (.488), White and Powell (.684), Burger and Rehnquist (.669), Blackmun and Powell (.614), Blackmun and Rehnquist (.494), and Powell and Rehnquist (.476). (See Table A).

Pairs with high and negative G indexes were Douglas and Burger (-.697), Douglas and Blackmun (-.577), Douglas and Powell (-.507), Douglas and Rehnquist (-.912), Brennan and Burger (-.439), Brennan and Rehnquist (-.651), Marshall and Burger (-.464), and Marshall and Rehnquist (-.767).

Three factors accounted for 72.7 percent of the variance. (See Table B).

TABLE A
G BURGER COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	HARLAN	BRENNA	STEWAR	BWHITE	MARSHL	BURGER	BLACKM	POWELL	REHNQT
HBLACK	--	3 44 2 43	31 19 36 9	10 40 12 33	31 19 33 12	28 22 31 14	10 37 15 29	45 5 40 5	26 5 23 3		
DOUGLA	000	--	5 0 60 27	3 6 39 181	3 6 117 106	5 4 147 75	3 5 39 178	7 2 195 28	2 3 150 39	1 2 84 27	2 1 109 3
HARLAN	-154	-303	--	18 49 4 24	54 13 10 18	47 20 12 16	23 42 2 24	63 4 22 6	35 5 14 3		
BRENNA	-089	606	-114	--	34 9 86 103	39 4 112 76	29 14 13 169	39 4 163 26	28 4 123 39	14 2 68 27	17 1 94 3
STEWAR	-089	-054	515	178	--	101 22 53 58	37 83 5 103	117 6 88 24	90 7 64 36	46 1 39 28	47 0 64 4
BWHITE	-114	-306	325	000	357	--	36 113 6 72	144 10 61 19	118 14 36 28	69 10 15 19	77 2 33 2
MARSHL	-141	608	031	759	228	-044	--	37 5 162 24	24 5 126 38	8 1 74 28	10 1 93 3
BURGER	044	-697	451	-439	200	392	-464	--	149 20 5 23	81 14 4 15	44 2 17 2
BLACKM	000	-577	333	-308	277	488	-356	745	--	73 10 12 19	83 1 28 3
POWELL		-507		-260	296	556	-350	684	614	--	80 2 27 2
REHNQT		-912		-651	-109	384	-757	669	494	476	--

TABLE B. G BURGER COURT TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE.

	Factor 1	Factor 2	Factor 3
Black	-.05196	.03730	-.50490
Douglas	.82089	-.34388	-.13937
Harlan	-.11781	.26659	.87540
Brennan	.87453	.09545	-.03583
Stewart	.26364	.58250	.49682
White	-.05539	.79393	.09536
Marshall	.88295	.00059	.17596
Burger	-.62300	.60886	.17654
Blackmun	-.44125	.69799	.12163
Powell	-.33027	.81245	-.23074
Rehnquist	-.87748	.29473	-.11233

Factor	EIGENVALUE	PCT OF VAR	CUM PCT
1	4.73577	43.1	43.1
2	2.20061	20.0	63.1
3	1.06248	9.7	72.7
4	0.97462	8.9	81.6
5	0.54216	4.9	86.5
6	0.51283	4.7	91.2
7	0.38640	3.5	94.7
8	0.29697	2.7	97.4
9	0.22281	2.0	99.4
10	0.12456	1.1	100.5
11	-0.05927	-0.5	100.0

Initial Factor 1 was loaded highly and positively by White, Burger, Blackmun, Powell, and Rehnquist. It was loaded highly and negatively by Douglas, Marshall, and Brennan. (See Table C).

Terminal Factor 1 was loaded highly and positively by the three liberals and negatively by the conservatives. White, Stewart, Harlan, and Black had insignificant loadings. The conservatives, joined by White, loaded positively on Factor 2. Stewart also loaded positively on this factor, but he also loaded with Harlan on Factor 3, which might represent an independent strain of conservativism due to Harlan's lack of voting interaction with half of the new conservatives and Stewart's moderation. Black loaded on none of the factors, although he loaded negatively on Factor 3. (See Table B).

Figure 1 represents axes of liberalism (Factor 1) and conservatism (Factor 2). Marshall and Brennan virtually define the liberalism factor. Douglas, in his customary position in the lower right quadrant, reacts to the conservative cluster as well as the liberal cluster. Stewart and Harlan also are in their now customary positions. Stewart is plotted about equidistant from the two axes in the upper right quadrant. Black continues to follow his own ideology and is located very near the intersection of the axes.

The plotting of the conservatives, at first glance, seems improper. The conservatism axis appears to be defined by White, who is closest to it. But White's voting, not the most conservative

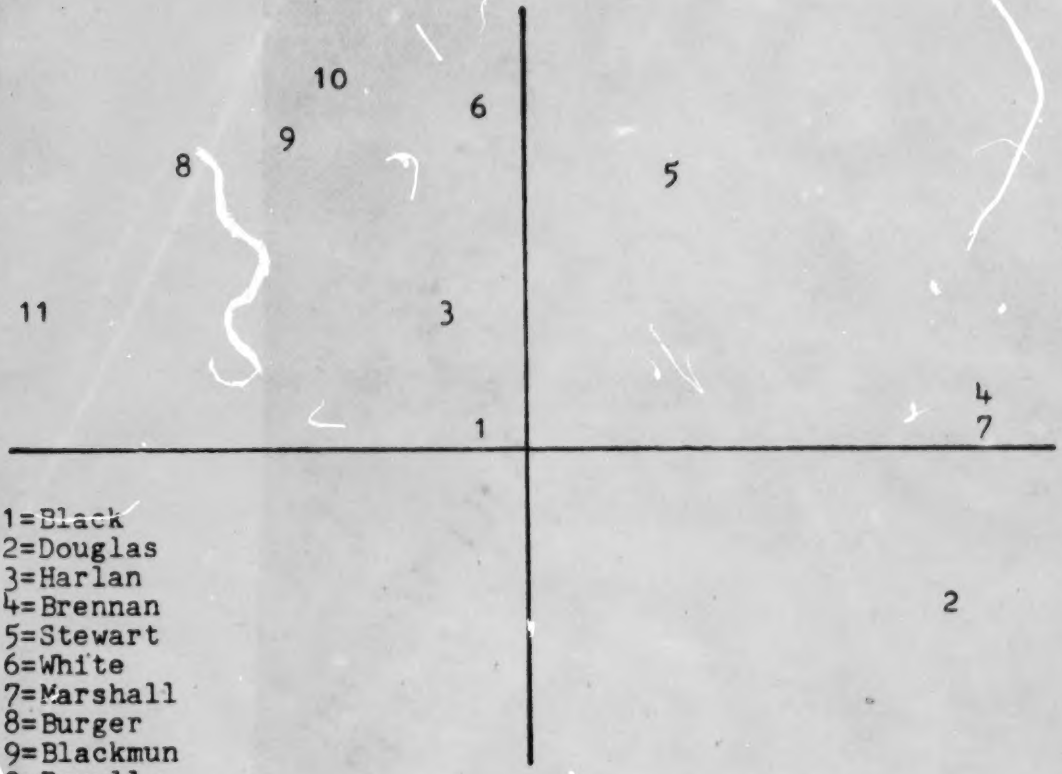
TABLE C. G BURGER COURT INITIAL FACTOR MATRIX AND COMMUNALITY TABLE.

	Factor 1	Factor 2	Factor 3
Black	0.01914	-0.28279	0.42271
Douglas	-0.88385	0.13489	0.16437
Harlan	0.32729	0.59578	-0.62387
Brennan	-0.65610	0.49994	0.30787
Stewart	0.16811	0.79028	-0.05337
White	0.51367	0.53761	0.29935
Marshall	-0.69930	0.55985	0.08848
Burger	0.87322	0.16554	-0.00936
Blackmun	0.77286	0.28799	0.12821
Powell	0.71825	0.22498	0.50588
Renquist	0.87166	-0.33106	0.00710

Variable	Communality
Black	
Black	.25902
Douglas	.82641
Harlan	.85128
Brennan	.77519
Stewart	.65565
White	.64249
Marshall	.81029
Burger	.79001
Blackmun	.69668
Powell	.82241
Rehnquist	.86945

FIGURE 1. G BURGER COURT FIRST AND SECOND DIMENSIONS

HORIZONTAL FACTOR 1 VERTICAL FACTOR 2



1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

of the justices', represents the best dimension of the conservative voters. Rehnquist, at the negative extreme of the liberalism axis, is the first conservative justice to react so strongly to the liberal elements on the court. Spread out between the Rehnquist plotting and the positive pole of the conservatism axis are Burger, Blackmun and Powell.

Figure 2 is the plottings of the justices along the Factor 1 axis (liberalism) and the Factor 3 axis (defined by Harlan and, to a lesser extent, Stewart). It is one of the few graphs that show a unidimensional relationship among all justices on the court. Clustered at the negative end of the liberalism axis are conservatives Burger, Blackmun, Powell, and Rehnquist. Clustered at the positive pole are Douglas, Brennan, and Marshall. In the middle of the upper right quadrant is Stewart. Situated along the bipolar vertical axis are Harlan, to the positive extreme, and Black, at the negative extreme. Acting as anchor at the intersection is White.

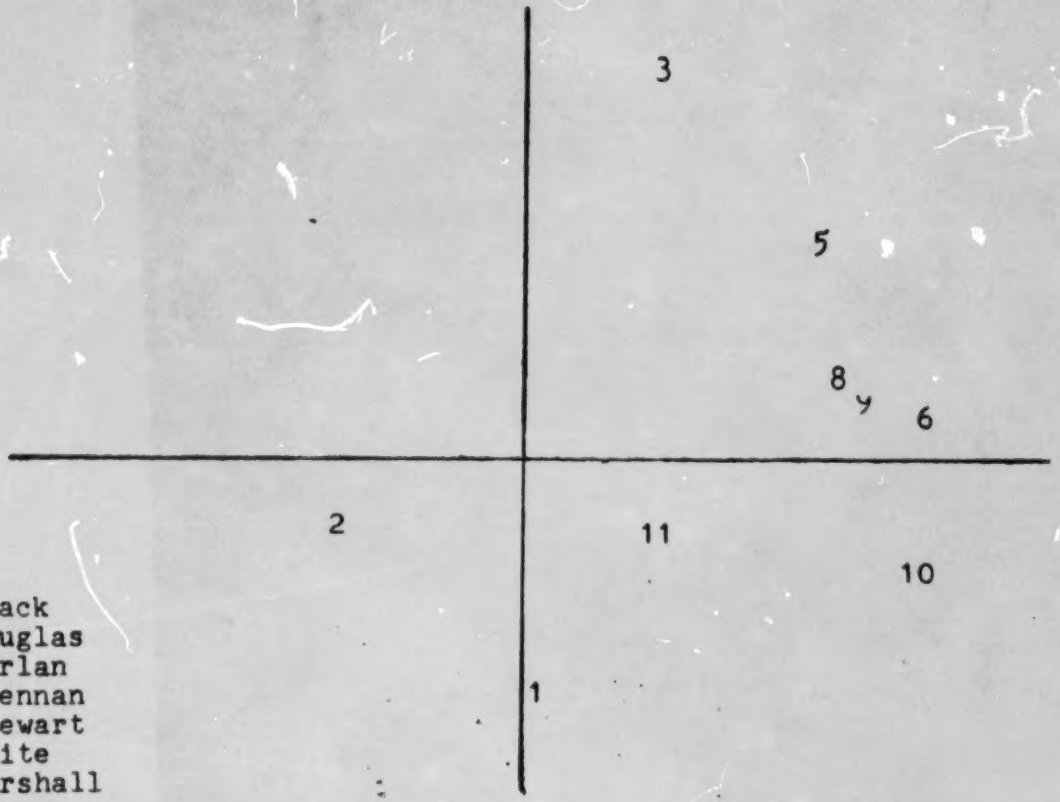
Table D includes the liberalism rankings of the Burger Court justices. Always ranked highest are Douglas, Brennan, and Marshall. Always ranked at the other extreme are Powell, Rehnquist, Burger, and Blackmun. Again in the middle are independents Black and Harlan and moderates Stewart and White.

C Burger Court

The C Burger Court addressed 199 nonunanimous C-cases. It decided a high of 61 cases in 1972 and a low of 28 cases (excluding the 12 cases in the partial 1973 term) in 1969. About 26 percent

FIGURE 2. G BURGER COURT SECOND AND THIRD DIMENSIONS

HORIZONTAL FACTOR 2 VERTICAL FACTOR 3



1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

FIGURE 3. G BURGER COURT FIRST AND THIRD DIMENSIONS

HORIZONTAL FACTOR 1 VERTICAL FACTOR 3

1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

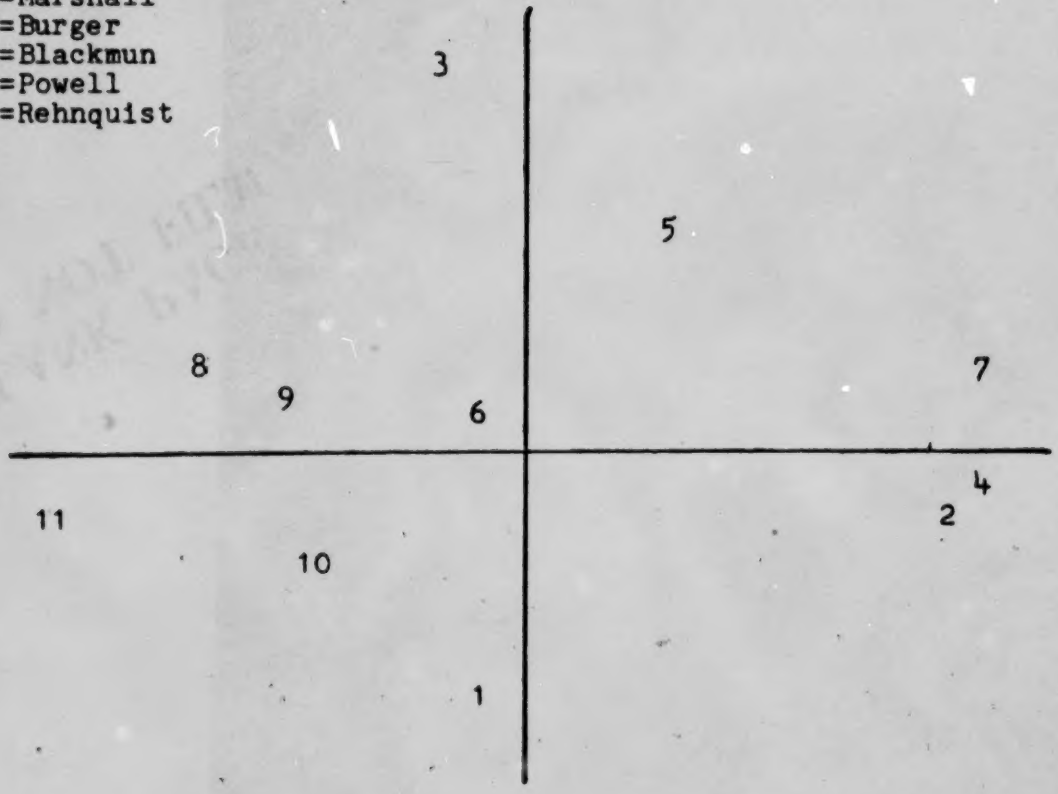


TABLE D. G BURGER COURT RANKING OF LIBERALISM*

RANK	PERCENTAGE Justice(%)	ROTATED LOADING** Justice(Loading)	UNROTATED LOADING** Justice(Loading)
1.	Douglas(96)	Marshall(88)	Douglas(-88)
2.	Brennan(82)	Brennan(87)	Marshall(-70)
3.	Marshall(82)	Douglas(83)	Brennan(-66)
4.	Black(48)	Stewart(26)	Black(02)
5.	Stewart(48)	Black(-05)	Stewart(17)
6.	White(34)	White(-06)	Harlan(33)
7.	Harlan(30)	Harlan(-18)	White(52)
8.	Powell(26)	Powell(-33)	Powell(72)
9.	Blackmun(22)	Blackmun(-44)	Blackmun (77)
10.	Burger(13)	Burger(-62)	Burger(87)
11.	Rehnquist(04)	Rehnquist(-88)	Rehnquist(87)

*The two left columns are scales of liberalism. The right column is a scale of anti-conservatism because the first factor in the terminal solution was a conservatism factor.

**All loadings are two-place decimals.

of the cases were decided by one vote or tie votes. Of the 199 cases, 80 were decided liberally and 119 conservatively.

Pairs of justices with high and positive G indexes included Douglas and Brennan (.605), Douglas and Marshall (.650), Harlan and Stewart (.574), Harlan and White (.424), Harlan and Burger (.500), Brennan and Marshall (.798), White and Powell (.626), White and Rehnquist (.419), Burger and Blackmun (.764), Burger and Powell (.650), Burger and Rehnquist (.702), Blackmun and Powell (.650), Blackmun and Rehnquist (.544), and Powell and Rehnquist (.500). Pairs with high and negative G indexes were Douglas and Burger (-.683), Douglas and Blackmun (-.604), Douglas and Powell (-..494), Douglas and Rehnquist (-.940), Brennan and Burger (-.427), Brennan and Rehnquist (-.702), Marshall and Burger (-.500), and Marshall and Rehnquist (-.836). (See Table E).

Four factors accounted for 84.3 percent of the variance. (See Table F).

Initial Factor 1 was loaded highly and positively by White, Burger, Blackmun, Powell, Rehnquist, and, to a lesser extent, Harlan. It was loaded highly and negatively by Douglas, Brennan, and Marshall. Black and Stewart loaded negatively. (See Table G).

Terminal Factor 1 was loaded highly and positively by liberals Douglas, Brennan, and Marshall. It was loaded highly and negatively by Burger, Blackmun, Powell, and Rehnquist, and, to lesser extents by Harlan and White. Factor 2 included Stewart, White, Burger, Blackmun, Powell, and Rehnquist. Douglas loaded negatively.

TABLE E

C BURGER COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	HARLAN	BRENNA	STEWAR	BWHITE	MARSHL	BURGER	BLACKM	POWELL	REHNQT
HBLACK	--	2 37 1 37	27 15 31 17	9 33 10 28	29 13 28 10	25 17 28 10	9 30 11 26	37 5 33 5	23 5 20 3		
DOUGLA	000	--	3 0 53 21	2 5 33 153	3 4 99 90	5 2 129 59	2 4 29 154	5 2 163 26	1 3 131 32	1 2 75 25	2 1 97 1
HARLAN	-148	-375	--	16 42 3 19	49 9 8 14	44 14 9 13	19 37 1 19	54 4 16 6	31 5 12 3		
BRENNA	-070	605	-122	--	30 6 72 88	34 2 99 60	24 12 7 146	32 4 136 24	23 3 108 33	13 2 60 25	14 1 85 1
STEWAR	000	-044	574	202	--	90 15 46 47	28 74 3 87	100 5 71 23	79 3 55 33	43 0 33 27	40 0 59 2
BWHITE	-122	-343	424	-031	383	--	29 102 2 58	126 10 45 17	104 13 30 22	66 10 9 17	71 2 27 0
MARSHL	-077	650	000	798	197	-083	--	26 5 139 22	17 3 113 33	7 1 66 26	7 1 69 1
BURGER	044	-683	500	-427	234	443	-500	--	129 15 5 21	72 14 4 13	84 0 15 2
BLACKM	000	-504	333	-328	316	490	-397	764	--	68 10 8 17	76 0 23 2
POWELL		-494		-238	359	626	-339	650	650	--	73 0 25 2
REHNQT		-940		-702	-167	419	-836	702	544	500	--

TABLE F. C BURGER COURT TERMINAL FACTOR MATRIX AND EIGENVALUE TABLE.

Justice	Factor 1	Factor 2	Factor 3	Factor 4
Black	-.04925	-.04680	-.05254	.97460
Douglas	.84408	-.29620	-.18458	.84808
Harlan	-.15114	.13302	.96258	-.12597
Brennan	.87811	.12347	-.01153	-.04248
Stewart	.25148	.51632	.64848	.13497
White	-.11947	.79163	.20057	-.18526
Marshall	.90292	-.01916	.13379	-.05359
Burger	-.64340	.50760	.34444	.07187
Blackmun	-.48382	.65844	.22171	.06199
Powell	-.30493	.88457	-.14574	.05748
Rehnquist	-.91620	.31582	-.15725	-.06720

Factor	Eigenvalue	Pct of Var	Cum Pct
1	4.91064	44.6	44.6
2	2.26972	20.6	65.3
3	1.08145	9.8	75.1
4	1.00917	9.2	84.3
5	.524530	4.8	89.1
6	.48629	4.4	93.5
7	.34742	3.0	96.4
8	.22406	2.0	98.5
9	.20120	1.8	100.3
10	.09188	0.8	101.1
11	-.12643	-1.1	100.0

TABLE G. C BURGER COURT INITIAL FACTOR MATRIX AND COMMUNALITY TABLE.

	Factor 1	Factor 2	Factor 3	Factor 4
Black	.00412	-.17907	.53496	.79935
Douglas	-.88705	.14785	.16315	-.03541
Harlan	.37284	.61065	-.60716	.32147
Brennan	-.61659	.52412	.24322	-.15435
Stewart	.19153	.81596	.02151	.24443
White	.56318	.53732	.17759	-.27944
Marshall	-.72699	.54639	.07917	-.05547
Burger	.86577	.16638	-.04403	.13050
Blackmun	.79381	.26070	.14997	.00621
Powell	.70184	.25573	.52756	-.25281
Rehnquist	.89416	-.38521	.02467	-.14104

Variable	Communality
Black	.95723
Douglas	.83659
Harlan	.98389
Brennan	.78826
Stewart	.76858
White	.71550
Marshall	.83641
Burger	.75943
Blackmun	.72063
Powell	.90002
Rehnquist	.96841

Harlan, who did not serve with Powell and Rehnquist, defined Factor 3. Stewart, who did serve with Harlan, also loaded on Factor 3. Factor 4 was defined by Black (See Table F).

Figure 4 represents the liberalism and conservatism factors as axes. Douglas, Brennan, and Marshall cluster around the positive pole of the liberalism axis. Stewart, in the middle of the upper right quadrant, and Harlan, in the upper left quadrant, are in their customary positions.

Except for Black, who is nearly at the intersection of the axes, the rest of the justices are in the upper left quadrant. They are strung out from Rehnquist, who is dichotomous to Douglas and at the negative pole of the liberalism axis, through Burger, Blackmun, and Powell to White, who, ironically, is the most modest conservative and yet defines the conservatism axis.

Figure 5 shows Black's neutralism factor and a very nearly linear relationship among the rest of the justices along the horizontal (liberalism) axis.

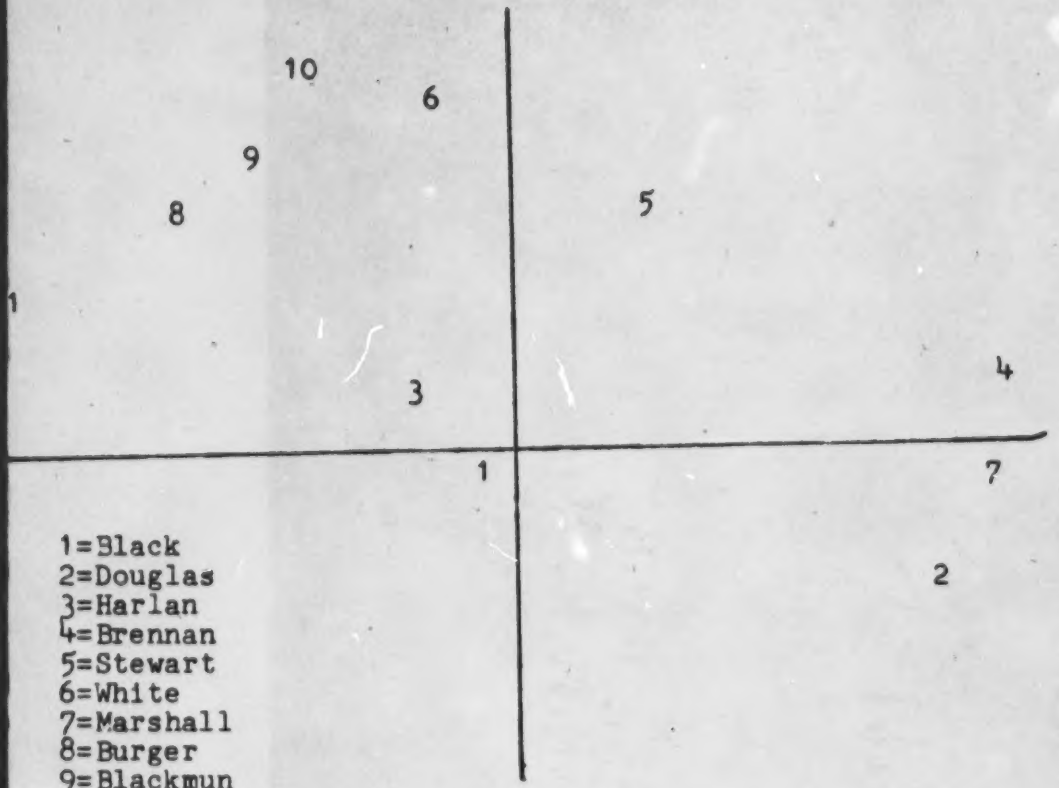
Table H reveals the relative rankings of the justices in the C Burger Court. Douglas, Brennan, Marshall, and sometimes Stewart make up a liberal minority. Black and Stewart are best described as independents. Rehnquist, Burger, Blackmun, Powell, White, and Harlan comprise a strong conservative majority.

P Burger Court

The P Burger Court addressed 23 P-cases. It heard nine cases during each of the 1970 and 1972 terms and five cases during the 1971 term. Eight cases were decided by one vote. Three

FIGURE 4. C BURGER COURT FIRST AND SECOND DIMENSIONS

HORIZONTAL FACTOR 1 VERTICAL FACTOR 2



1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

FIGURE 5. C BURGER COURT FIRST AND THIRD DIMENSIONS

HORIZONTAL FACTOR 1 VERTICAL FACTOR 3

1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
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8=Burger
9=Blackmun
10=Powell
11=Rehnquist

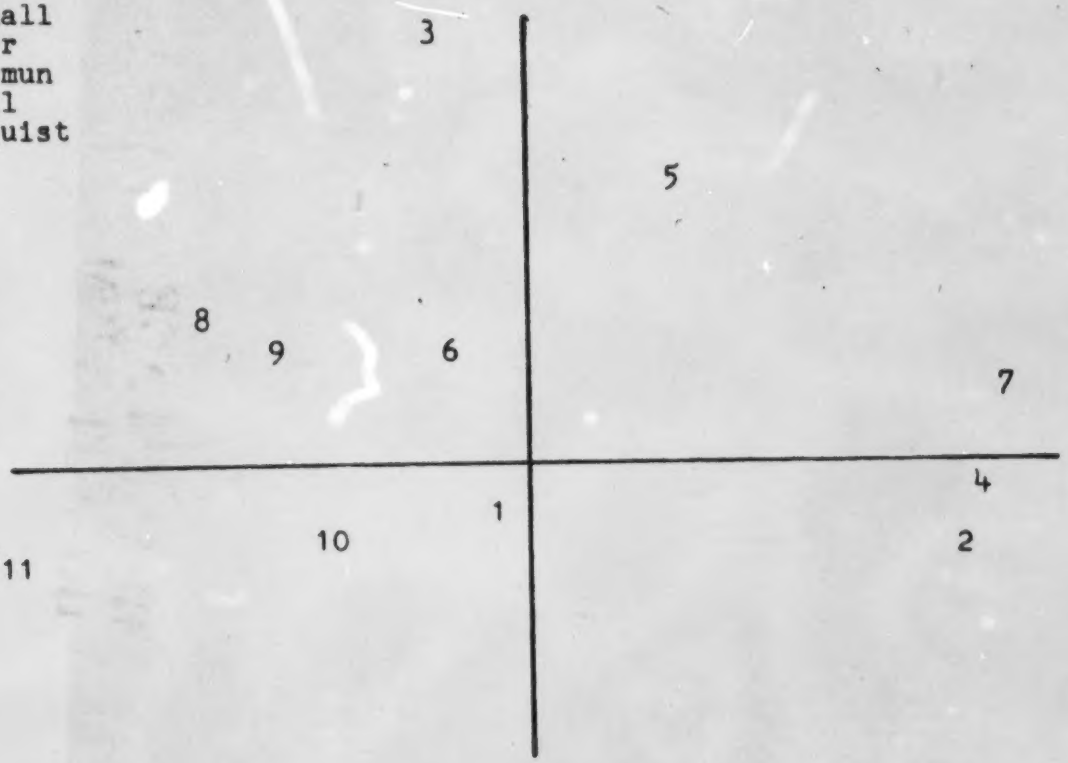
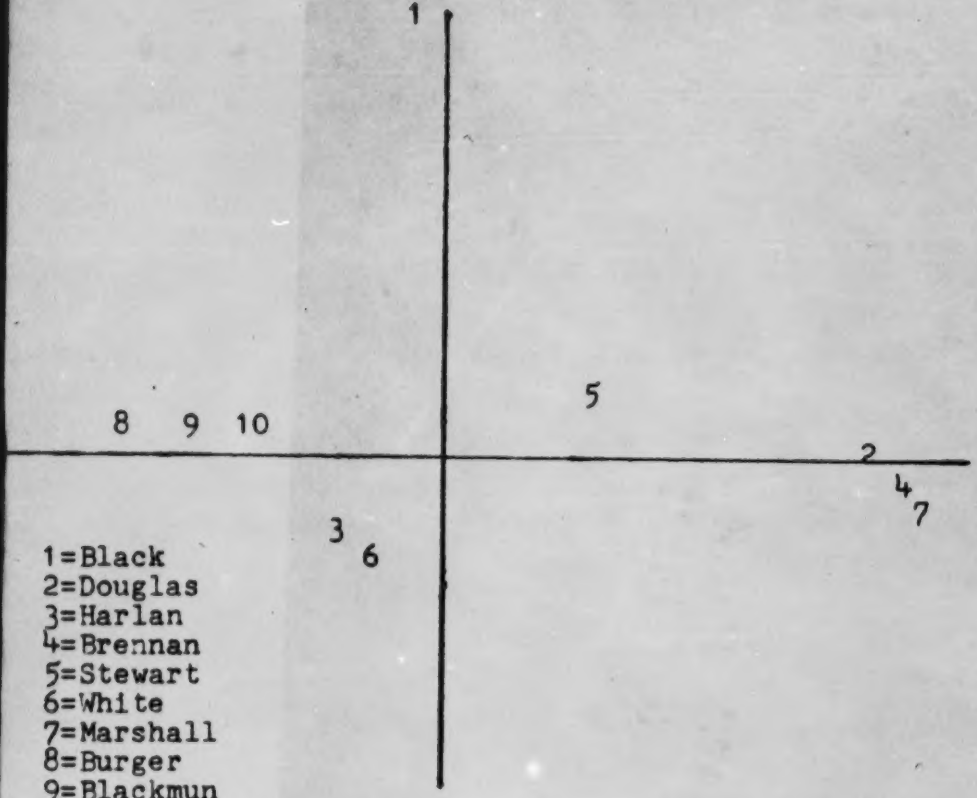


FIGURE 6. C BURGER COURT FIRST AND FOURTH DIMENSIONS
HORIZONTAL FACTOR 1 VERTICAL FACTOR 4.



1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

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FIGURE 7. C BURGER COURT SECOND AND THIRD DIMENSIONS

HORIZONTAL FACTOR 2 VERTICAL FACTOR 3

1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

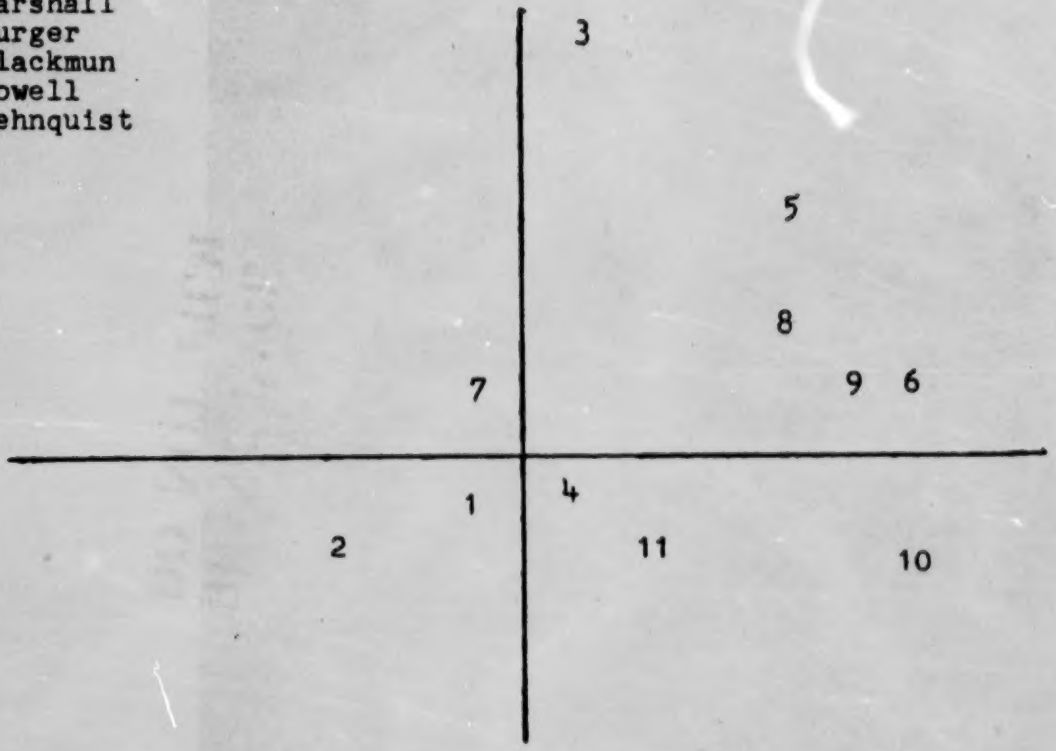

FIGURE 8. C BURGER COURT SECOND AND FOURTH DIMENSIONS

HORIZONTAL FACTOR 2 VERTICAL FACTOR 4

1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

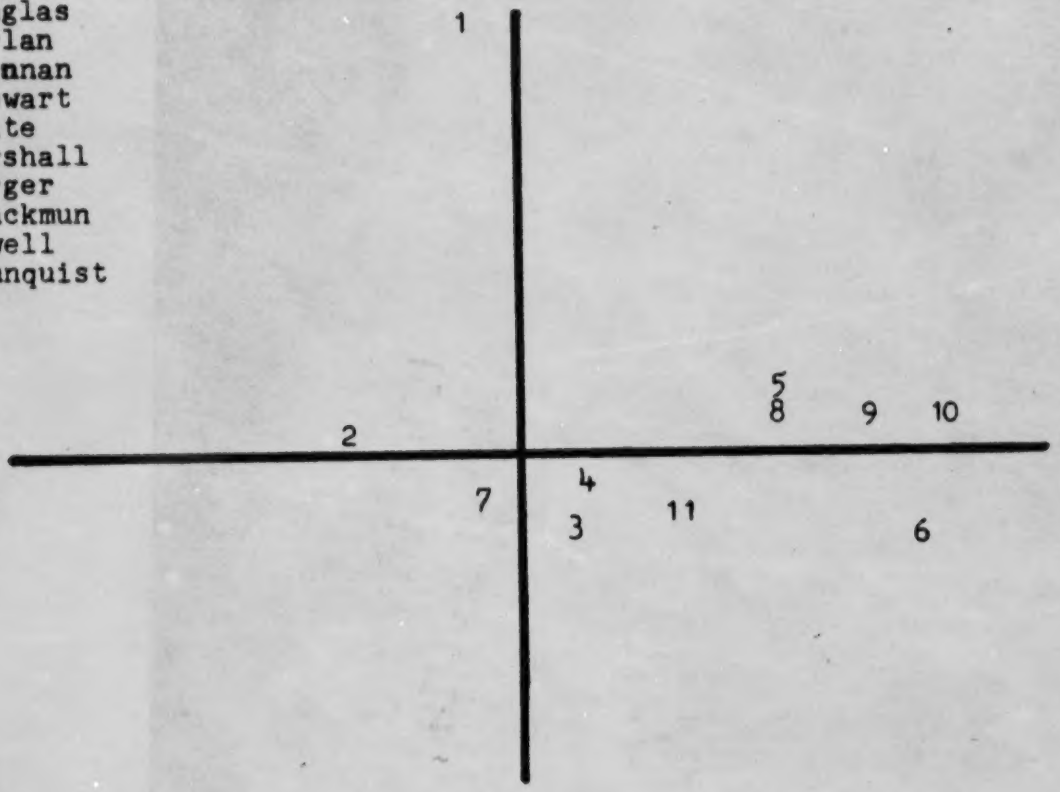

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FIGURE 9. BURGER COURT THIRD AND FOURTH DIMENSIONS

HORIZONTAL FACTOR 3 VERTICAL FACTOR 4

1=BLACK
2=DOUGLAS
3=HARLAN
4=BRENNAN
5=STEWART
6=WHITE
7=MARSHALL
8=BURGER
9=BLACKMUN
10=POWELL
11=REHNQUIST

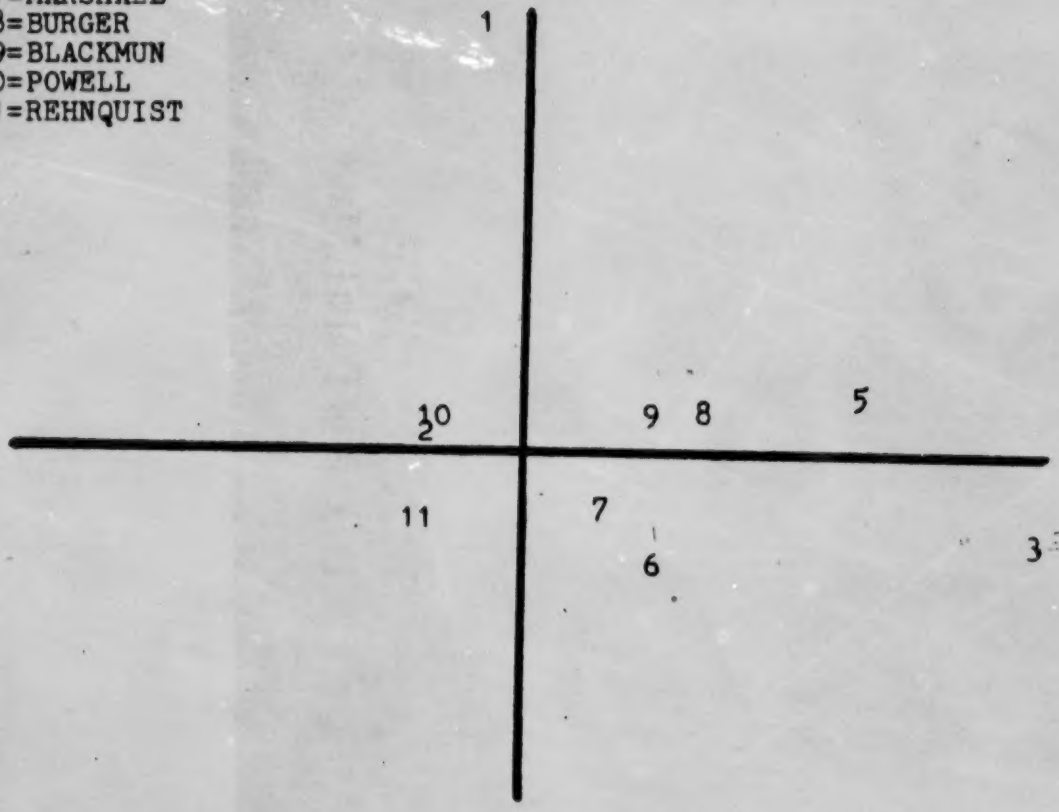


TABLE H. C BURGER COURT RANKING OF LIBERALISM*

RANK	PERCENTAGE Justice(%)	ROTATED LOADINGS** Justice (Loading)	UNROTATED LOADINGS** Justice (Loading)
1	Douglas(96)	Marshall(-91)	Douglas(-89)
2	Marshall(84)	Brennan(-85)	Marshall(-73)
3	Brennan(82)	Douglas(-75)	Brennan(-66)
4	Black(48)	Stewart(-33)	Black(00)
5	Stewart(48)	Black(00)	Stewart(19)
6	White(31)	Harlan(43)	Harlan(37)
7	Harlan(28)	White(44)	White(56)
8	Powell(26)	Powell(82)	Powell(70)
9	Blackmun(21)	Blackmun(90)	Blackmun(79)
10	Burger(14)	Burger(92)	Burger(87)
11	Rehnquist(2)	Rehnquist(96)	Rehnquist(89)

*The left column is a scale of liberalism. The two right columns are scales of anti-conservatism because in both cases the first factors were conservatism factors.

**All loadings are two-place decimals.

cases dealt with fair trial issues, one with privacy, four with community order, twelve with obscenity, and three with national security.

Pairs of justices with high and positive G indexes included Black and Douglas (.500), Douglas and Brennan (.544), Harlan and Blackmun (.554), Brennan and Marshall (.825), White and Burger (.477), White and Blackmun (.477), White and Powell (1.00), White and Rehnquist (.856), Burger and Blackmun (1.00), Burger and Powell (.714), Burger and Rehnquist (.856), and Powell and Rehnquist (.856).

Pairs with high and negative G indexes were Douglas and Harlan (-1.00), Burger and Douglas (-.635), Blackmun and Douglas (-.635), Powell and Douglas (-.714), Rehnquist and Douglas (-.856), Burger and Brennan (-.564), Blackmun and Brennan (-.564), Powell and Brennan (-.714), Stewart and Rehnquist (-.570), Marshall and Burger (-.738), Marshall and Powell (-.714), and Marshall and Rehnquist (-.856). (See Table I).

Four factors accounted for 98.8 percent of the variance. (See Table K).

Initial and terminal Factors 1 were loaded highly and positively by the Nixon appointees and, to lesser extents, by Harlan and White. Brennan, Douglas, Stewart, and Marshall loaded highly and negatively. Terminal Factor 3 was loaded by Harlan and Stewart. Factor 4 was defined by White. (See Tables J and L).

Figure 10 depicts axes representing Factor 1 (unfavorableness)

TABLE I

P BURGER COURT FOURFOLD TABLES AND G INDEX MATRIX

	HBLACK	DOUGLA	HARLAN	BRENNA	STEWAR	BWHITE	MARSHL	BURGER	BLACKM	POWELL	REHNQT
HBLACK	--	0 2 0 6	3 0 6 0	1 2 2 4	3 0 3 3	1 2 2 4	1 2 2 4	3 0 4 2	3 0 4 2		
DOUGLA	500	--	0 0 8 0	0 0 5 17	0 0 7 15	0 0 15 7	0 0 5 17	0 0 18 4	0 0 18 4	0 0 12 2	0 0 13 1
HARLAN	-333	-1.0	--	3 6 0 0	6 3 0 0	3 6 0 0	3 6 0 0	7 2 0 0	7 2 0 0		
BRENNA	109	554	-333	--	3 2 5 13	4 1 11 7	4 1 1 17	3 2 16 2	3 2 16 2	1 1 11 1	1 1 12 0
STEWAR	333	363	333	391	--	5 3 10 5	3 5 2 13	7 1 12 3	7 1 12 3	2 0 10 2	2 0 11 1
BWHITE	109	-363	-333	-031	-126	--	3 12 2 6	14 1 5 3	14 1 5 3	12 0 0 2	12 0 1 1
MARSHL	109	544	-333	825	391	-216	--	2 3 17 1	2 3 17 1	1 1 11 1	1 1 12 0
BURGER	109	-635	554	-564	-126	477	-738	--	19 0 0 4	11 1 1 1	12 0 1 1
BLACKM	109	-635	554	-564	-126	477	-738	1.0	--	11 1 1 1	12 0 1 1
POWELL		-714		-714	-427	1.0	-714	714	714	--	12 0 1 1
REHNQT		-856		-856	-570	856	-856	856	856	856	--

TABLE J. P BURGER COURT INITIAL FACTOR MATRIX

	Factor 1	Factor 2	Factor 3	Factor 4
Black	-.13876	.46619	.68644	-.40313
Douglas	-.84757	.46284	.15532	-.36899
Harlan	.40561	-.95814	.23608	.12158
Brennan	-.77776	.10628	.20060	.49787
Stewart	-.41099	-.28260	.78154	.13244
White	.58922	.66699	.18960	.54261
Marshall	-.84773	.06204	.08018	.40423
Burger	.88359	-.09135	.38719	-.06809
Powell	.90619	.38846	-.00267	.17657
Rehnquist	1.00242	.30156	-.07423	-.02513

Variable	Communality
Black	0.87029
Douglas	1.08921
Harlan	1.15308
Brennan	0.90432
Stewart	0.87699
White	1.12243
Marshall	0.89233
Burger	0.94363
Blackmun	0.91313
Powell	1.00332
Rehnquist	1.10192

TABLE K. P BURGER COURT COMMUNALITY AND EIGENVALUE TABLE.

VARIABLE	EST COMMUNALITY
Black	1.00000
Douglas	1.00000
Harlan	1.00000
Brennan	1.00000
Stewart	1.00000
White	1.00000
Marshall	1.00000
Burger	1.00000
Blackmun	1.00000
Powell	1.00000
Rehnquist	1.00000

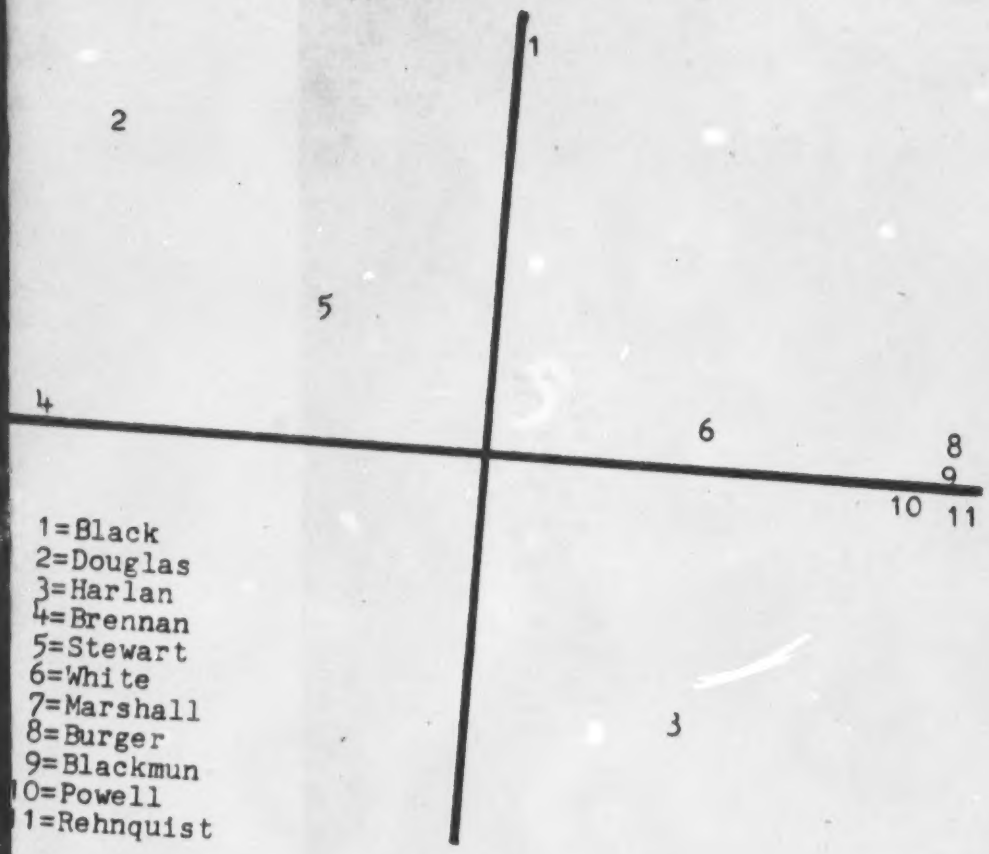
Factor	Eigenvalue	Pct of Var	Cum Pct
1	6.13367	55.8	55.8
2	2.15287	19.6	75.3
3	1.51386	13.8	89.1
4	1.07026	9.7	98.8
5	.40773	3.7	102.5
6	.34687	3.2	105.7
7	.12287	1.1	106.8
8	.09377	0.9	107.7
9	-.01093	-0.1	107.6
10	-.31074	-2.8	104.7
11	-.52028	-4.7	100.0

TABLE L. P BURGER COURT TERMINAL FACTOR MATRIX

	Factor 1	Factor 2	Factor 3	Factor 4
Black	.00447	.091342	.17554	.07156
Douglas	-.74591	.69301	-.19653	-.11802
Harlan	.43409	-.53672	.72660	-.36235
Brennan	-.87487	.02859	.27577	.33151
Stewart	-.33342	.29152	.82493	-.01794
White	.44105	.09419	-.08959	.95446
Marshall	-.90473	-.00404	.18206	.20134
Burger	.91543	.06983	.29481	.11760
Blackmun	.90478	.00428	.28046	.12622
Powell	.82123	-.02571	-.20604	.53455
Rehnquist	.95543	-.02091	-.27623	.33516

FIGURE 10. P BURGER COURT FIRST AND SECOND DIMENSIONS.

HORIZONTAL FACTOR 1 VERTICAL FACTOR 2



1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

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and Factor 2 (absolutism). The Nixon appointees cluster around the positive pole of the Factor 1 axis. White is about halfway between the pole and the intersection. Harlan is plotted in the middle of the unfavorableness-anti-absolutist quadrant. At the extreme positive pole of the Factor 2 axis is Black. Douglas is also plotted high on the absolutist axis but just as much along the negative half of the unfavorableness axis. Stewart, in a direct line between Harlan and Douglas, is less extreme in his views than is Douglas. Brennan and Marshall are clustered at the extreme of the negative pole of the unfavorableness axis.

Table M contains the rankings of the P Burger Burger Court justices. Marshall, Douglas, Brennan, and Stewart have favorable attitudes toward the press. The Nixon appointees, Harlan, and White have unfavorable attitudes. Black, who had medium rankings in all three scales, has an independent--not a moderate--attitude toward press issues.

Discussion

In each of the three samples the justices tended to vote in blocs. The blocs--in G- and C-cases--seemed to represent liberalism, conservatism, independence, and neutralism. The P-blocs seemed to represent favorableness, unfavorableness, absolutism, and independence.

Also in each sample there appeared to be sub-blocs. The major blocs were more cohesive in the G- and C-samples than in the P-sample.

FIGURE 11. P BURGER COURT FIRST AND THIRD DIMENSIONS.

HORIZONTAL FACTOR 1 VERTICAL FACTOR 3

1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

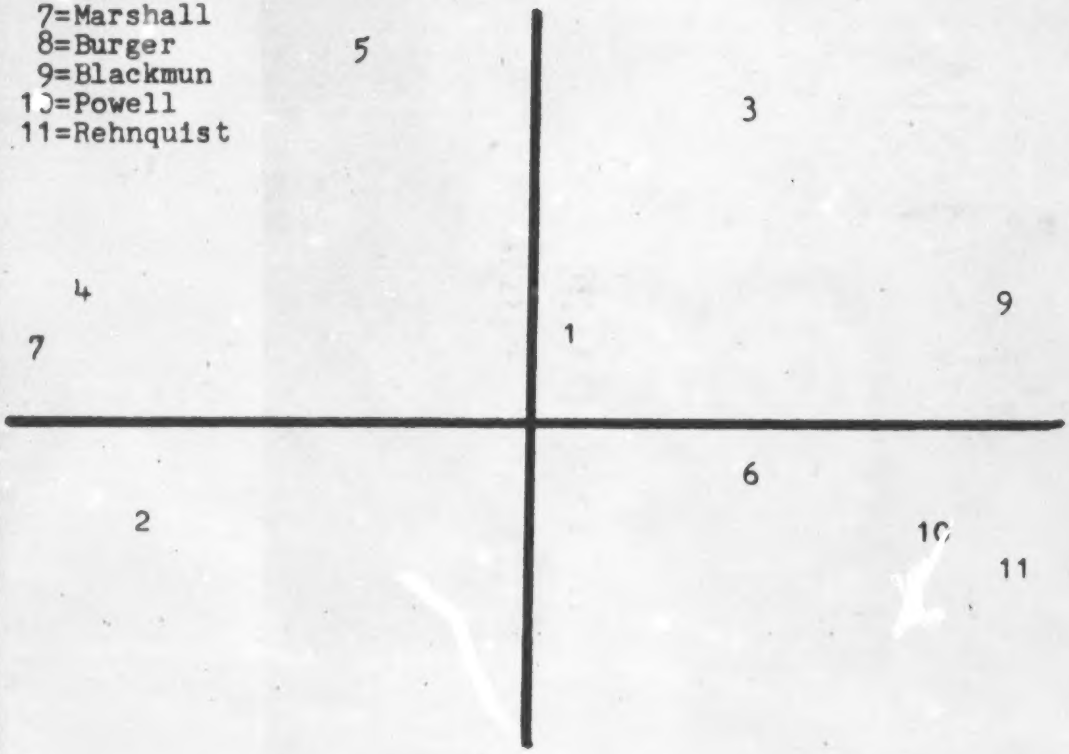
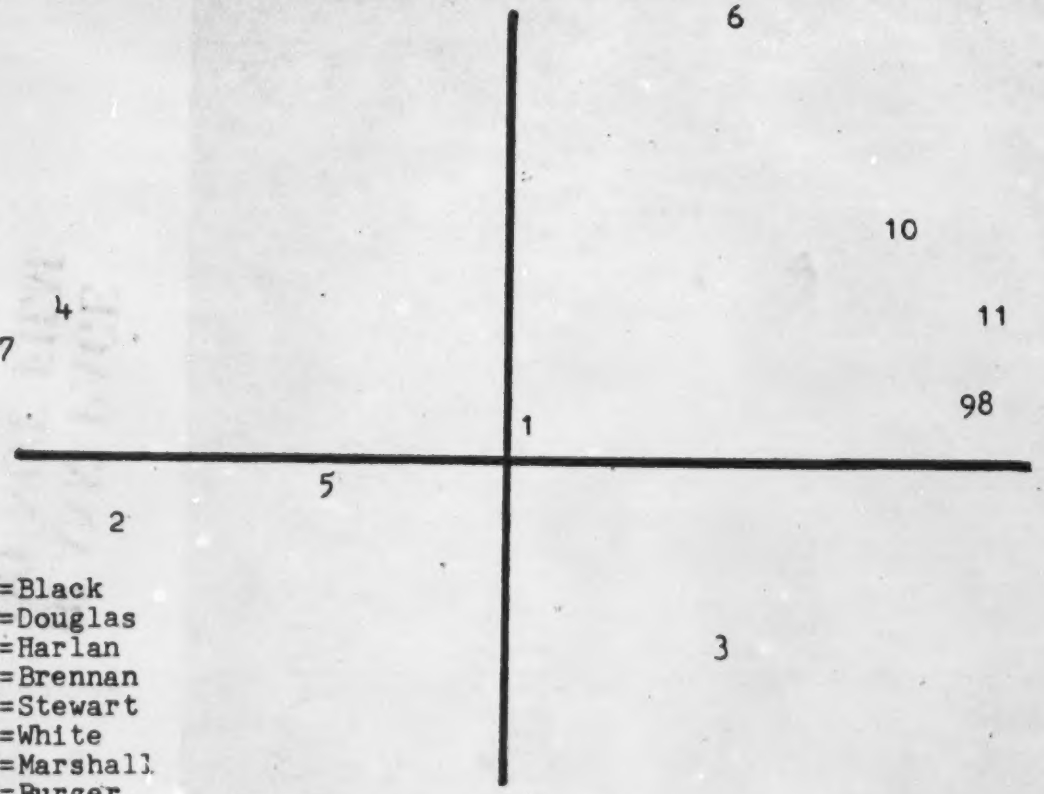


FIGURE 12. P BURGER COURT FIRST AND FOURTH DIMENSIONS.

HORIZONTAL FACTOR 1 VERTICAL FACTOR 4



1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

FIGURE 13. P BURGER COURT SECOND AND THIRD DIMENSIONS.

HORIZONTAL FACTOR 2 VERTICAL FACTOR 3

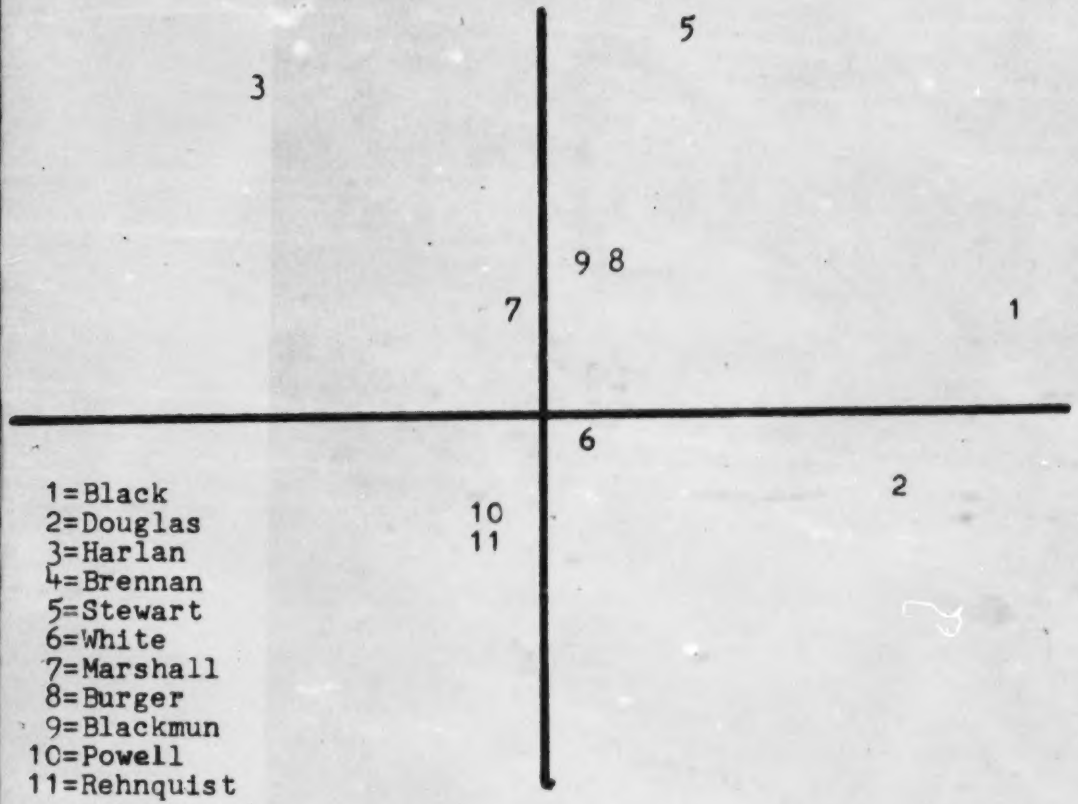


FIGURE 14. P BURGER COURT SECOND AND FOURTH DIMENSIONS.

HORIZONTAL FACTOR 2 VERTICAL FACTOR 4

1=Black
2=Douglas
3=Harlan
4=Brennan
5=Stewart
6=White
7=Marshall
8=Burger
9=Blackmun
10=Powell
11=Rehnquist

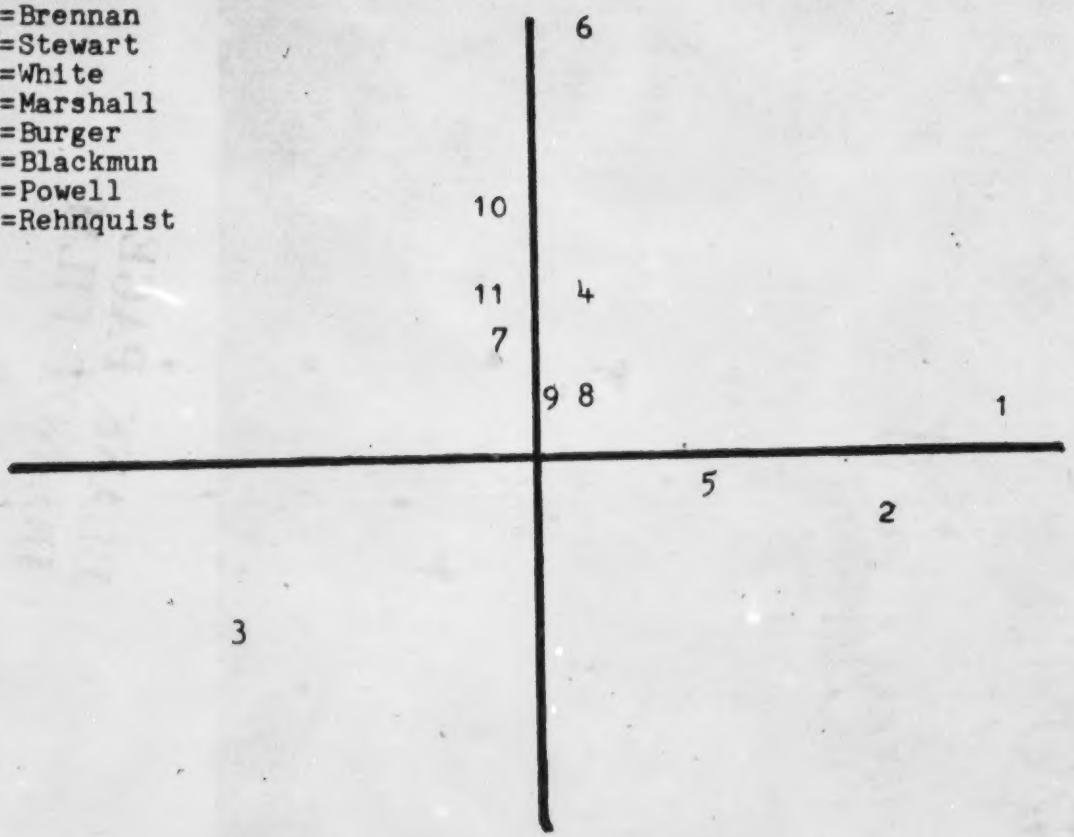


TABLE M. P BURGER COURT RANKING OF FAVORABLENESS*

Rank	Percentage Justice(%)	Rotated Loadings** Justice(Loading)	Unrotated Loadings** Justice(Loading)
1	Douglas(100)	Marshall(-91)	Marshall(-85)
2	Brennan(78)	Brennan(-85)	Douglas(-85)
3	Marshall(78)	Douglas(-75)	Brennan(-78)
4	Black(67)	Stewart(-33)	Stewart(-41)
5	Brennan(65)	Black(00)	Black(-14)
6	White(35)	Harlan(43)	Harlan(41)
7	Burger(17)	White(44)	White(59)
8	Blackmun(17)	Powell(82)	Burger(88)
9	Powell(14)	Blackmun(90)	Blackmun(89)
10	Rehnquist(7)	Burger(92)	Powell(91)
11	Harlan(0)	Rehnquist(96)	Rehnquist(1.00)

*The left column is a scale of favorableness. The two right columns are scales of anti-favorableness because in each case the first factor was an unfavorableness factor.

**All loadings are two-place decimals except Renquist's in the right column.

The G- and C-blocs seemed to consist of liberals Marshall, Brennan, and Douglas; conservatives Rehnquist, Burger, Blackmun, Powell, White, and, to a lesser extent, Harlan; moderate Stewart; and independent Black.

The P-blocs seemed to consist of libertarians Marshall, Douglas, Brennan, and, to a lesser extent, Stewart; conservatives Rehnquist, Powell, Blackmun, Burger, White, and Harlan; and independent Black.

The major difference between the P-blocs and the G- and C-blocs seems to be Stewart, who is more favorable in P-cases than he is liberal in C- or G-cases.

Black, despite his well-known absolutist approach to the First Amendment, much admired by free speech libertarians, kept his distance, figuratively and literally (in factorial space), from the Nixon and libertarian blocs.

Although there is no statistical method of correlating the factor loadings, Figure 15 represents a synthesis of the three first and second dimension figures.

Some of the plottings had to be reversed to keep the favorableness and unfavorableness plottings in perspective. The G- and C-plottings of the justices are so close to each other their differences are statistically (and probably actually) insignificant. Some of the P-plottings--especially for Rehnquist, Stewart, Brennan, and Marshall--also are very close to their G- and C-plottings.

Black's plotting scales the vertical axis because it

FIGURE 15. SYNTHESIS OF G-, C-, AND P-BURGER COURT FIRST AND SECOND DIMENSIONS.

1 = Black
2 = Douglas
3 = Harlan
4 = Brennan
5 = Stewart
6 = White
7 = Marshall
8 = Burger
9 = Blackmun
10 = Powell
11 = Rehnquist

Courier Type is for P plottings.(1234567890).
Light Italic Type is for G plottings. (1234567890).
Dual Gothic Type is for C plottings. (1234567890).

represents his independent absolutist stand. Douglas's plotting rises into the upper right quadrant because his feelings concerning freedom of the press parallel those of Black. Harlan's P-plotting falls into the lower left quadrant in keeping with his dichotomous relationship with Douglas (Their G-index in P-cases was -1.00. Note Douglas and Harlan's diametric relationships in G- and C-samples also). The rest of the Nixon appointees and White repel from Black's absolutist dimension and cluster at the negative end of the favorableness axis. The P-plottings illustrate clearly uncorrelated (orthogonal) factors.

The establishment of the existence of distinct voting blocs in First Amendment cases can facilitate study of Supreme Court justices' attitudes toward a system of free expression.

Since justices do vote in blocs in First Amendment cases, mass communication law researchers can have more confidence in describing the attributes of the blocs and in explaining First Amendment freedoms.

A more sophisticated method of comparing Supreme Court justices' attitudes toward First Amendment freedoms with attitudes toward other issues needs development. Manipulation of the study samples should be applied in future behavioralist approaches to First Amendment study of the Supreme Court.

FOOTNOTES

[1]For a bibliography of the many aspects of the birth and development of judicial behavioralism, see Glendon Schubert, "Bibliographical Essay; Behavioral Research in Public Law," American Political Science Review 57 (1963):433-445. Also see Stuart Nagel, The Legal Process from a Behavioral Perspective (Homewood, Ill.: Dorsey Press, 1969); Glendon Schubert, Consitutional Politics (New York: Holt, Rinehart & Winston, 1964); C. Herman Pritchett, Civil Liberties and the Vinson Court (Chicago: University of Chicago Press, 1966); Glendon Schubert, The Judicial Mind; The Attitudes and Ideologies of Supreme Court Justices (Evanston, Ill.: Northwestern University Press, 1965); Glendon Schubert, The Judicial Mind Revisited (Oxford University Press: New York, 1974); Glendon Schubert, "Judicial Attitudes and Voting Behavior: The 1961 Term of the United States Supreme Court," Jurimetrics 28 (Winter, 1963):100; S. Sidney Ulmer, "The Dimensionality of Judicial Voting Behavior," Midwest Journal of Political Science 13 (1969):471.

[2]See especially Schubert, Judicial Mind and Judicial Mind Revisited.

[3]Robert H. Birkby, "Supreme Court Libertarians and the First Amendment; An Analysis of Voting and Opinion Agreement, 1956-1964," Southwestern Social Science Quarterly 48 (March, 1968): 586-594; Schubert, Constitutional Politics, pp. 513-591; Pritchett, Civil Liberties, pp. 23-79, 177-239; Samual Krislov, The Supreme Court and Political Freedom (New York: The Free Press, 1968); Schubert, Judicial Mind, pp. 159, 170, 173, 174, 177, 182, 282; Schubert, Judicial Mind Revisited, pp. 26, 27, 36, 37, 44, 47, 50, 61, 62, 66, 68, 88, 106, 114, 141, 145; Martin Shapiro, Freedom of Speech (Englewood Cliffs, N.J.: Prentice-Hall, 1966).

[4]Fred S. Siebert, Theodore Peterson, and Wilbur Schramm, Four Theories of the Press (Urbana, Ill.: University of Illinois Press, 1956), p. 2.

[5]Commission on Freedom of the Press, The Problems and the Principles of Freedom and Responsibility (Chicago: University of Chicago Press, 1947), pp. 16-18.

[6]F.P. Dunne, Mr. Dooley on the Choice of Law (Charlottesville, Va.: University of Virginia Press), pp. 47-52.

[7]See especially Cecilie Gaziano, "An Investigation of the Relationship Between Public Opinion and Supreme Court Decisions," paper presented to the Law Division of the Association for Education in Journalism, Madison, Wisc., August, 1977.

[8]Charles G. Haines, "General Observations on the Effects of Personal, Political and Economic Influences in the Decisions of Judges," Illinois Law Review 17 (1922): 96-116, in Glendon Schubert, ed., Judicial Behavior: A Reader in Theory and Research (Chicago: Rand McNally, 1964), p. 45.

[9]Primary tools of behavioralists are bloc analysis, cumulative scaling, and correlation analysis. See Schubert, Judicial Behavior, chap. IV; Schubert, Judicial Mind; Glendon Schubert, Quantitative Analysis of Judicial Behavior (Glencoe, Ill.: Free Press, 1954); Schubert, Judicial Mind Revisited. For a general explanation of the application of social science techniques to jurisprudence, see Nagel, Legal Process, pp. 1-33; Joseph Tannenhaus, "Supreme Court Attitudes Toward Federal Administrative Agencies, 1947-1956--An Application of Social Science Methods to the Study of Judicial Process," Vanderbilt Law Review 14 (1961): 473. For a clear description of the techniques see Sheldon Goldman and Thomas P. Jahnige, The Federal Courts as a Political System (New York: Harper & Row, 1971), pp. 149-200.

[10]This is not a value-free assertion. Controversy stirs over the behavioralistic school. See comments by Donald M. Gillmor and Everette E. Dennis, "Legal Research and Judicial Communication," in Steven Chaffee, ed., Political Communication; Issues and Strategies for Research (Beverly Hills, Calif.: Sage Publications, 1975), pp. 297-299. Also see Tannenhaus, "An Application," 473-502; Glendon Schubert, "Ideologies and Attitudes, Academic and Judicial," Journal of Politics 29 (1967):3-40; Wallace Mendelson, "The Untroubled World of Jurimetrics," Journal of Politics 26 (1964):914-922; Wallace Mendelson, "The Neo-Behavioral Approach to the Judicial Process: A Critique," American Political Science Review 57 (1963):596-603; Schubert, "Behavioral Research," pp.433-445; Theodore L. Becker, "Inquiry into a School of Thought in the Judicial Behavior Movement," Midwest Journal of Political Science 7 (1963):259-260; Schubert, Judicial Mind Revisited, pp. 19-20; John D. Sprague, Voting Patterns of the United States Supreme Court; Cases in Federalism, 1889-1959 (Indianapolis: Bobbs Merrill, 1968), pp. 9-11, 157-160; Ulmer, "Dimensionality," pp. 471-483; Theodore L. Becker, "Judicial Structure and its Political Functioning in Society: New Approaches to Teaching and Research in Public Law," Journal of Politics 29 (May, 1967):302-333.

[11]Schubert, "1961 Term," p. 100.

[12]Schubert, Judicial Mind, p. 103; Schubert, Quantitative Analysis, p. 312; Stuart Nagel, "The Relationship Between the Political and Ethnic Affilations of Judges and Their Decision-Making," in Schubert, Judicial Behavior, p. 245. Also see Krislov, Political Freedom, pp. 161-162.

[13]Schubert, "1961 Term," p. 115.

[14]See appendices A, B, and C. Data assembled for distribution by the Institute for Social Research, Center for Political Studies, Ann Arbor, Mich. See Guide to Resources and Services, 1976-1977, p. 172 and John Paul Ryan and C. Neal Tate, The Supreme Court in American Politics: Policy Through Law (Washington, D.C.: American Political Science Association, 1975).

[15]Ibid. Four criteria had to be met for a case to qualify as a P-case: (1) The case had to be nonunanimous; (2) The case had to fall between the dates of the APSA Package; (3) The case had to involves, at least minimally, the printed press, or aspects ofother media that would be interchangeable with the printed press; and (4) The case had to prompt either or both litigants or any or all justices to invoke the freedom of the press clause of the First Amendment as a major argument. The author decided whether affirmance or reversal constituted a favorable or unfavorable outcome. The decision was based on two considerations: (1) Which litigant claimed that the freedom of the press clause had been violated, and (2) Which litigant represented the media.

[16]$G_{J_1J_2} = \frac{a + d - b + c}{n}$ where $G_{J_1J_2}$ is the G index of agreement for justices J_1 and J_2, a is the +/+ total, b is the +/- total, c is the -/+ total, d is the -/- total, and n is the number of cases in the fourfold table. See J.P. Guilford and Benjamin Fruchter, Fundamental Statistics in Pyschology and Education, 5th ed. (New York: McGraw-Hill, 1973), p. 311. Also see Sprague, "Voting Patterns," pp. 21-24; J.W. Holly and J.P. Guilford, "A Note on the G Index of Agreement," Educational and Psychological Measurement, 24 (1964):749; Richard M. Ritter, "The Complexity of the Phi Coefficient," Educational and Psychological Measurement (publication pending).

[17]Schubert, "1961 Term," pp. 351-562; Fred N. Kerlinger, Foundations of Behavioral Research, 2nd ed. (New York: Holt, Rinehart & Winston, 1973), p. 659; Norman H. Nie, C. Hadlai Hull, Jean G. Jenkins, Karin Steinbrenner, and Dale H. Bent, SPSS; Statistical Package for the Social Sciences, 2nd ed. (New York: McGraw-Hill, 1975), pp. 469-471, 479, 485.

APPENDIX A*

CODEBOOK I
NON-UNANIMOUS SUPREME COURT DECISIONS, OCTOBER, 1946-FEBRUARY, 1974

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS
V1	1-6		CASE ID—US VOL + PAGE[1]
V2	7-8		COURT TERM YEAR[2]
V3	9-10		CASE VOTING DIVISION
		235	1. VOTE 8 1
		127	2. VOTE 7 1
		47	3. VOTE 6 1
		6	4. VOTE 5 1
		279	5. VOTE 7 2
		153	6. VOTE 6 2
		68	7. VOTE 5 2
		5	8. VOTE 4 2
		441	9. VOTE 6 3
		144	10. VOTE 5 3
		33	11. VOTE 4 3
		396	12. VOTE 5 4
		51	13. VOTE 4 4

[1] Case identification number. The first two digits are the second and third digits of the U.S. REPORTS Volume number; the last four digits are the U.S. REPORTS page number, *except* for the most recent cases. For these (i.e., those reported in Vols. 93 and after of the SUPREME COURT REPORTER) U.S. REPORTS Volume and page numbers were not available. Consequently, these cases have been assigned arbitrary, non-overlapping "U.S. REPORTS volume numbers" as follows:

"20" = SUPREME COURT REPORTER, Vol. 93
"21" = SUPREME COURT REPORTER, Vol. 94, *etc.*

The page numbers for these cases are the SUPREME COURT REPORTER page numbers.

[2] COURT TERM year frequencies are:

Term Year	*N*	*Term Year*	*N*	*Term Year*	*N*	*Term Year*	*N*
46	74	53	50	60	71	67	131
47	68	54	36	61	69	68	93
48	73	55	59	62	90	69	37
49	51	56	90	63	112	70	58
50	57	57	94	64	73	71	61
51	59	58	73	65	77	72	66
52	69	59	71	66	112	73	13

*All of the appendixes refer to a more expensive study. See Thomas A. Schwartz "A Study of the Relationship Between the Ideological Tendencies of United States Supreme Court Justices and Their Voting Behavior in Selected Cases Affecting the Press," (MS Thesis: So. Dak. St. Univ, 1977).

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS	VARIABL NUMBE
		3	14. VOTE 3 3	
		4	15. VOTE 4 1	
V4	11		VOTE OF BLACK, J.	V15
		387	1. CONSERVATIVE	
		1397	2. LIBERAL	
		208	3. NO VOTE	
V5	12		VOTE OF REED, J.	V16
		418	1. CONSERVATIVE	
		169	2. LIBERAL	
		1405	3. NO VOTE	
V6	13		VOTE OF FRANKFURTER, J.	V1
		617	1. CONSERVATIVE	
		322	2. LIBERAL	
		1053	3. NO VOTE	
V7	14		VOTE OF DOUGLAS, J.	V
		203	1. CONSERVATIVE	
		1668	2. LIBERAL	
		121	3. NO VOTE	
V8	15		VOTE OF MURPHY, J.	V
		9	1. CONSERVATIVE	
		188	2. LIBERAL	
		1795	3. NO VOTE	
V9	16		VOTE OF JACKSON, J.	
		317	1. CONSERVATIVE	
		109	2. LIBERAL	
		1566	3. NO VOTE	
V10	17		VOTE OF RUTLEDGE, J.	
		21	1. CONSERVATIVE	
		181	2. LIBERAL	
		1790	3. NO VOTE	
V11	18		VOTE OF BURTON, J.	
		552	1. CONSERVATIVE	
		188	2. LIBERAL	
		1252	3. NO VOTE	
V12	19		VOTE OF VINSON, C.J.	
		299	1. CONSERVATIVE	
		126	2. LIBERAL	
		1567	3. NO VOTE	
V13	20		VOTE OF CLARK, J.	
		697	1. CONSERVATIVE	
		520	2. LIBERAL	
		775	3. NO VOTE	
V14	21		VOTE OF MINTON, J.	
		237	1. CONSERVATIVE	

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS
		121	2. LIBERAL
		1634	3. NO VOTE
V15	22		VOTE OF WARREN, C.J.
		247	1. CONSERVATIVE
		1006	2. LIBERAL
		739	3. NO VOTE
V16	23		VOTE OF HARLAN, J.
		976	1. CONSERVATIVE
		296	2. LIBERAL
		720	3. NO VOTE
V17	24		VOTE OF BRENNAN, J.
		292	1. CONSERVATIVE
		1065	2. LIBERAL
		635	3. NO VOTE
V18	25		VOTE OF WHITTAKER, J.
		284	1. CONSERVATIVE
		80	2. LIBERAL
		1628	3. NO VOTE
V19	26		VOTE OF STEWART, J.
		671	1. CONSERVATIVE
		497	2. LIBERAL
		824	3. NO VOTE
V20	27		VOTE OF WHITE, J.
		452	1. CONSERVATIVE
		443	2. LIBERAL
		1097	3. NO VOTE
V21	28		VOTE OF GOLDBERG, J.
		52	1. CONSERVATIVE
		215	2. LIBERAL
		1725	3. NO VOTE
V22	29		VOTE OF FORTAS, J.
		72	1. CONSERVATIVE
		278	2. LIBERAL
		1642	3. NO VOTE
V23	30		VOTE OF MARSHALL, J.
		76	1. CONSERVATIVE
		314	2. LIBERAL
		1602	3. NO VOTE
V24	31		VOTE OF BURGER, C.J.
		205	1. CONSERVATIVE
		30	2. LIBERAL
		1757	3. NO VOTE
V25	32		VOTE OF BLACKMUN, J.
		154	1. CONSERVATIVE

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS
		43	2. LIBERAL
		1795	3. NO VOTE
V26	33		VOTE OF POWELL, J.
		85	1. CONSERVATIVE
		29	2. LIBERAL
		1878	3. NO VOTE
V27	34		VOTE OF REHNQUIST, J.
		111	1. CONSERVATIVE
V27.5*		4	2. LIBERAL
		1877	3. NO VOTE
V28	35		GENERAL SUBJECT AREA
		1201	1. CIVIL LIBERTIES
		791	2. ECONOMICS
V29	36		CASE OUTCOME DIRECTION
		848	1. CONSERVATIVE
		1144	2. LIBERAL
V30	37		COURT ERA
		451	1. VINSON COURT
		1306	2. WARREN COURT
		235	3. BURGER COURT
V31	38		DETAILED COURT ERA
		451	1. VINSON COURT
		329	2. EARLY WARREN
		564	3. MIDDLE WARREN
		413	4. LATE WARREN
		235	5. BURGER COURT
V32	39-40		COURT NUMBER
		215	1. 1946-48 TERMS
		236	2. 1949-52 TERMS
		66	3. 53-54 TO HARLAN
		80	4. 54-56 TO BRENNAN
		24	5. 1956 TO WHITTAKER
		159	6. 56-58 TO STEWART
		248	7. 58-61 TO WHITE
		316	8. 1961-64 TERMS
		189	9. 1965-66 TERMS
		224	10. 1967-68 TERMS
		38	11. 69-70 TO BLACKMUN
		74	12. 70-71 TO POWELL
		123	13. 1971-73 TERMS
/3 /33	41		SIMPLIFIED COURT NUMBER
		215	0. 1946-48 TERMS
		236	1. 1949-52 TERMS
		146	2. 53-56 TO BRENNAN

ELS	VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE NAME/VALUES AND LABELS
			183	3. 56-58 TO STEWART
			248	4. 58-61 TO WHITE
			316	5. 1961-64 TERMS
			189	6. 1965-66 TERMS
			224	7. 1967-68 TERMS
			95	8. 1969-70 TERMS
			140	9. 1971-73 TERMS
	V34	79-80		DATA SET ID NUMBER
			1992	51. for all cases

APPENDIX B

The following cases comprise the sample for this study:

FREE PRESS-FAIR TRIAL (P_1-cases)

Craig v. Harney, 331 U. S. 364 (1947)
Stroble v. California, 343 U. S. 181 (1952)
Marshall v. United States, 360 U. S. 310 (1959)
Beck v. Washington, 369 U. S. 541 (1962)
Wood v. Georgia, 370 U. S. 375 (1962)
Rideau v. Louisiana, 373 U. S. 723 (1963)
Estes v. Texas, 381 U. S. 532 (1965)
Sheppard v. Maxwell, 384 U. S. 333 (1966)
United States v. Caldwell, 408 U. S. 665 (1972)
Branzburg v. Hayes, 408 U. S. 665 (1972)
In the Matter of Pappas, 408 U. S. 665 (1972)

FREE PRESS-PRIVACY/REPUTATION (P_2-cases)

Barr v. Matteo, 360 U. S. 564 (1959)
Linn v. United Plant Guard Workers, 383 U. S. 53 (1966)
Rosenblatt v. Baer, 383 U. S. 53 (1966)
Time, Inc. v. Hill, 385 U. S. 374 (1967)
Curtis Publishing Co. v. Butts, 388 U. S. 130 (1967)
St. Amant v. Thompson, 390 U. S. 727 (1968)
Rosenbloom v. Metromedia, 403 U. S. 29 (1971)

FREE PRESS-COMMUNITY ORDER/NATIONAL INTEREST (P_3-cases)

Donaldson v. Read Magazine, Inc., 333 U. S. 178 (1948)
Breard v. Alexandria, 341 U. S. 622 (1951)
Beauharnais v. Illinois, 343 U. S. 250 (1952)
Talley v. California, 362 U. S. 60 (1960)
Griswold v. Connecticut, 381 U. S. 479 (1965)
Amalgamated Food Employees Union v. Logan Valley Plaza, Inc., 391 U. S. 308 (1968)
Organization for a Better Austin v. Keefe, 402 U. S. 415 (1971)
Lloyd Corporation v. Tanner, 407 U. S. 551 (1972)
United States v. Times-Picayne Publishing Co., 345 U. S. 594 (1953)
Times-Picayne Publishing Co. v. United States, 345 U. S. 594 (1953)
United States v. Hariss, 347 U. S. 612 (1954)
United States v. IUUAAAIWA 352 U. S. 567 (1957)
CBS v. Democratic National Committee, 412 U. S. 94 (1973)
Pittsburgh Press Company v. Pittsburgh Commission on Human Relations, 413 U. S. 376 (1973)

FREE PRESS-COMMUNITY MORALITY (P_4-cases)

Winters v. New York, 333 U. S. 507 (1948)
Doubleday & Co. v. New York, 335 U. S. 848 (1948)
Kingsley Books, Inc. v. Brown, 354 U. S. 436 (1957)
Roth v. United States, 354 U. S. 476 (1957)
Alberts v. California, 354 U. S. 476 (1957)
Smith v. California, 361 U. S. 147 (1959)
Times Film Corp. v. Chicago, 365 U. S. 43 (1961)
Manual Enterprises, Inc. v. Day, 370 U. S. 478 (1962)
Bantam Books, Inc. v. Sullivan, 372 U. S. 58 (1963)
Jacobellis v. Ohio, 378 U. S. 184 (1964)
A Quantity of Books v. Kansas, 378 U. S. 205 (1964)
Memoirs v. Massachusetts, 383 U. S. 463 (1966)
Redrup v. New York, 386 U. S. 767 (1967)
Austin v. Kentucky, 386 U. S. 767 (1967)
Gent v. Arkansas, 386 U. S. 767 (1967)
Jacobs v. New York, 388 U. S. 431 (1967)
Tannenbaum v. New York, 388 U. S. 439 (1967)
Keney v. New York, 388 U. S. 440 (1967)
Friedman v. New York, 388 U. S. 441 (1967)
Ratner v. California, 388 U. S. 442 (1967)
Cobert v. New York, 388 U. S. 443 (1967)
Sheperd v. New York, 388 U. S. 444 (1967)
Avansino v. New York, 388 U. S. 446 (1967)
Aday v. United States, 388 U. S. 447 (1967)
Corinth Publications v. Wesberry, 388 U. S. 448 (1967)
Books, Inc. v. United States, 388 U. S. 449 (1967)
Rosenbloom v. Virginia, 388 U. S. 450 (1967)
A Quantity of Books v. Kansas, 388 U. S. 452 (1967)
Mazes v. Ohio, 388 U. S. 453 (1967)
Schackman v. California, 388 U. S. 454 (1967)
Ginsburg v. New York, 390 U. S. 629 (1968)
Interstate Circuit, Inc. v. Dallas, 390 U. S. 676 (1968)
United Artists Corp. v. Dallas, 390 U. S. 676 (1968)
Rabeck v. New York, 391 U. S. 462 (1968)
Lee Art Theater, Inc. v. Virginia, 392 U. S. 636 (1968)
Perez v. Stein, 401 U. S. 82 (1971)
Dyson v. Stein, 401 U. S. 200 (1971)
Byrne v. Karalexis, 401 U. S. 216 (1971)
United States v. Reidel, 402 U. S. 351 (1971)
United States v. Thirty-Seven Photographs, 402 U. S. 363 (1971)
California v. LaRue, 409 U. S. 109 (1972)
Papish v. University of Missouri, 410 U. S. 667 (1973)
Miller v. California, 413 U. S. 15 (1973)
Paris Adult Theatre I v. Slaton, 413 U. S. 49 (1973)
Kaplan v. California, 413 U. S. 115 (1973)
United States v. Twelve 200-foot Reels, 413 U. S. 123 (1973)
United States v. Orito, 413 U. S. 139 (1973)

FREE PRESS-NATIONAL SECURITY (P_5-cases)

Dennis v. United States, 341 U. S. 494 (1951)
Yates v. United States, 354 U. S. 298 (1957)
Schneiderman v. United States, 354 U. S. 298 (1957)
Richmond v. United States, 354 U. S. 298 (1957)
Barenblatt v. United States, 360 U. S. 109 (1959)
Communist Party v. Subversive Activities Control Board, 367 U. S. 1 (1961)
Aptheker v. Secretary of State, 378 U. S. 500 (1964)
Zemel v. Rusk, 381 U. S. 1 (1965)
New York Times Co. v. United States, 403 U. S. 713 (1971)
United States v. Washington Post, 403 U. S. 413 (1971)
Kleindienst v. Mandel, 408 U. S. 753 (1972)

APPENDIX C

PRESS PACKAGE CODEBOOK

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
V1	1-6		CASE I.D.--Same as Appendix A
V2	7-8		COURT TERM YEAR--Same as Appendix A
V3	9-10		CASE VOTING DIVISION
		17	1. Vote 8-1
		0	2. Vote 7-1
		3	3. Vote 6-1
		0	4. Vote 5-1
		10	5. Vote 7-2
		5	6. Vote 6-2
		3	7. Vote 5-2
		0	8. Vote 4-2
		24	9. Vote 6-3
		4	10. Vote 5-3
		1	11. Vote 4-3
		25	12. Vote 5-4
		1	13. Vote 4-4
		0	14. Vote 3-3
		0	15. Vote 4-1
V4	11		VOTE OF BLACK
		11	1. Unfavorable
		66	2. Favorable

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
		15	3. No vote
V5	12		VOTE OF REED
		4	1. Unfavorable
		6	2. Favorable
		82	3. No Vote
V6	13		VOTE OF FRANKFURTER
		18	1. Unfavorable
		6	2. Favorable
		68	3. No Vote
V7	14		VOTE OF DOUGLAS
		10	1. Unfavorable
		80	2. Favorable
		2	3. No Vote
V8	15		VOTE OF MURPHY
		1	1. Unfavorable
		2	2. Favorable
		89	3. No Vote
V9	16		VOTE OF JACKSON
		5	1. Unfavorable
		5	2. Favorable
		82	3. No Vote
V10	17		VOTE OF RUTLEDGE
		1	1. Unfavorable
		2	2. Favorable

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
		89	3. No Vote
V11	18		VOTE OF BURTON
		13	1. Unfavorable
		4	2. Favorable
		75	3. No Vote
V12	19		VOTE OF VINSON
		4	1. Unfavorable
		5	2. Favorable
		83	3. No Vote
V13	20		VOTE OF CLARK
		42	1. Unfavorable
		14	2. Favorable
		36	3. No Vote
V14	21		VOTE OF MINTON
		6	1. Unfavorable
		1	2. Favorable
		85	3. No Vote
V15	22		VOTE OF WARREN
		28	1. Unfavorable
		28	2. Favorable
		36	3. No Vote
V16	23		VOTE OF HARLAN
		51	1. Unfavorable

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
		15	2. Favorable
		26	3. No Vote
V17	24		VOTE OF BRENNAN
		26	1. Unfavorable
		52	2. Favorable
		14	3. No Vote
V18	25		VOTE OF WHITTAKER
		8	1. Unfavorable
		2	2. Favorable
		82	3. No Vote
V19	26		VOTE OF STEWART
		23	1. Unfavorable
		51	2. Favorable
		18	3. No Vote
V20	27		VOTE OF WHITE
		27	1. Unfavorable
		36	2. Favorable
		29	3. No Vote
V21	28		VOTE OF GOLDBERG
		2	1. Unfavorable
		7	2. Favorable
		83	3. No Vote

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
V22	29		VOTE OF FORTAS
		9	1. Unfavorable
		24	2. Favorable
		59	3. No Vote
V23	30		VOTE OF MARSHALL
		6	1. Unfavorable
		24	2. Favorable
		62	3. No Vote
V24	31		VOTE OF BURGER
		19	1. Unfavorable
		4	2. Favorable
		69	3. No Vote
V25	32		VOTE OF BLACKMUN
		19	1. Unfavorable
		4	2. Favorable
		69	3. No Vote
V26	33		VOTE OF POWELL
		12	1. Unfavorable
		2	2. Favorable
		78	3. No Vote
V27	34		VOTE OF REHNQUIST
		13	1. Unfavorable
		1	2. Favorable
		78	3. No Vote

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
V28	34		PRESS CASE AREA
		11	1. Fair Trial
		7	2. Privacy-Reputation
		14	3. Community Order-National Interest
		49	4. Community Morality
		11	5. National Security
V29	36		CASE OUTCOME DIRECTION
		40	1. Unfavorable
		52	2. Favorable
V30	37		COURT ERA
		13	1. Vinson
		56	2. Warren
		23	3. Burger
V31	38		DETAILED COURT ERA
		10	1. Vinson
		8	2. Early Warren
		18	3. Middle Warren
		33	4. Late Warren
		23	5. Burger Court
V32	39-40		COURT NUMBER
		4	1. 1946-48 Terms
		6	2. 1949-52 Terms
		1	3. 1953-54 to Harlan

VARIABLE NUMBER	COLUMN NUMBER	FREQUENCY	VARIABLE DESCRIPTION
		0	4. 1954-56 to Brennan
		1	5. 1956 to Whittaker
		6	6. 1956-58 to Stewart
		7	7. 1958-61 to White
		11	8. 1961-64 Terms
		26	9. 1965-66 Terms
		7	10. 1967-68 Terms
		0	11. 1969-70 to Blackmun
		9	12. 1970-71 to Powell
		14	13. 1971-73 Terms
V33	41		APSA DIRECTION
		45	1. Conservative
		47	2. Liberal